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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,213	10/30/2003	Eduardo Jimenez	7433-00	2198
23909 7590 11/14/2008 COLGATE-PALMOLIVE COMPANY 909 RIVER ROAD PISCATAWAY, NJ 08855				
EXAMINER				
GUIDOTTI, LAURA COLE				
ART UNIT		PAPER NUMBER		
3727				
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/697,213

**Applicant(s)**

JIMENEZ ET AL.

**Examiner**

Laura C. Guidotti

**Art Unit**

3727

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 45, 48, 49, 77, 79-81, 88 and 89 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 45, 48, 49, 77, 79-81, 88 and 89 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 08012008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 45, 48-49, 77, 79-81, and 88-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Urbush, US 3,316,576 in view of Halm et al., US 6,442,786.

Urbush discloses a toothbrush comprising a handle (12), a head (18; the head is a conventional toothbrush) connected to the handle by a neck element (14), and a mechanical vibratory device (portions 40, 41, 42, 43) that causes the head to vibrate (via 21; Column 2 Lines 33-39). Regarding claim 77, the mechanical vibratory device is located in the region adjacent to the head (see Figures) and is operatively connected to an electric power source (Column 1 Lines 9-11; Column 2 Lines 38-39). Urbush utilizes

as its head a conventional toothbrush (Column 1 Lines 48-49) and the device is capable of using various sizes and types of conventional toothbrushes in the vibratory portion (Column 1 Lines 13-20). Urbush does not include a head comprising movable elements.

Halm et al. disclose the claimed invention including a handle (1), a neck connected to the handle (unlabeled area where head 2 joins to handle 1, see Figures), a head (2) connected to the neck (see Figures) and having a rigid portion (6) having a first surface and a second surface (upper and lowermost respective surfaces of 6 as shown in Figure 19), and a movable portion (67; Column 10 Lines 58-60, Figures 18-21) having a first surface and a second surface (upper and lowermost respective surfaces of 67 as shown in Figure 19), wherein the rigid portion is non-movable relative to the neck and wherein the movable portion is movable relative to the neck (Figures 19-20; Column 8 Lines 16-19, Column 10 Lines 39-41), wherein the rigid portion comprises a plurality of first cleaning elements extending from the first surface of the rigid portion that are fixedly mounted to the rigid portion (4, see Figures 18-21), wherein the movable portion comprises a plurality of second cleaning elements extending from the first surface of the movable portion that are fixedly mounted to the movable portion (also labeled 4, see Figures 18-21), a gap in the head positioned between the rigid portion and the movable portion (69, Column 10 Lines 45-54, gap being where material 10 is filled in, Figures 18-21), a resilient membrane for flexibly attaching the movable portion to the rigid portion (10), the membrane positioned in a part of the gap (throughout the gap, Figures 18-21), and a plurality of third cleaning elements (also labeled 4, Figures

18-21), each of the third cleaning elements mounted on the resilient membrane and connected to both the rigid portion and movable portion (Figures 18-21), wherein no portion of any of the third cleaning elements extends outwardly beyond the second surfaces of the movable and rigid portions under any condition (Figures 18-21).

Regarding claim 48, the third cleaning elements comprise movable wipers (the third cleaning elements 4 are tufts of bristles which act as wipers) and are "generally arrayed in surrounding relation" to the plurality of second cleaning elements (in that the third elements generally surround the leftmost portion of second elements as positioned in Figures 18-21). Regarding claim 49, the movable wipers rotate towards one another upon application of sufficient force on the toothbrush and away from each other upon release of that force (Figures 19-20). Regarding claim 79, the first, second, and third cleaning elements extend approximately the same distance from the head when no force is applied to the toothbrush (as shown in Figure 19). Regarding claims 80-81, at least one of the plurality of third cleaning elements is movable toward at least one of and each of the first and second cleaning elements (as the third cleaning elements are capable of moving toward each of the first and second cleaning elements when either force is being applied to the head in the manner shown in Figure 20 or when force is being released after being applied in the manner shown in Figure 20). Regarding claim 88, the first surface of the movable portion remains aligned with or below a plane defined by the first surface of the rigid portion under any condition (Figures 19-20 both show that the first or upper surface of the movable portion 67 remains aligned in the same plane as the first or upper surface of the rigid portion 6). Regarding claim 89, the

resilient membrane (10) is made of an elastomeric material capable of flexing and recovering randomly during use of the toothbrush (Column 2 Lines 43-56, Column 3 Lines 29-39, Column 10 Lines 42-60).

It would have been obvious for one of ordinary skill in the art at the time the invention was made to substitute the conventional toothbrush head of Urbush for one having a rigid portion, movable portion, and a resilient membrane flexibly attaching the movable portion to the rigid portion, as Halm et al. teach, so that the toothbrush can have a flexible head with an improved ability to clean surfaces of teeth which face in the back of the mouth.

#### ***Response to Arguments***

2. Applicant's arguments with respect to claims 45, 48-49, 77, 79-81, and 88-89 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Guidotti whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Laura C Guidotti/  
Primary Examiner, Art Unit 3727

lcg